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Constitutional Rubbish

by Joel S. Hirschhorn

Americans need a civics lesson. And so do politicians. Of all the wrong and delusional thinking about the US Constitution the one that is most thoroughly incorrect and routinely used for political propaganda purposes is that there are three coequal branches of the federal government.

You hear presidents, members of Congress and media pundits say it all the time. They are wrong. Nowhere in the Constitution or the Federalist Papers is there any statement or declaration that the three branches are coequal. Why has this myth persisted for so long? Why do so many prominent and supposedly educated people keep invoking this outright lie?

Make no mistake. Either in theory or practice is there any basis whatsoever for believing that the legislative, executive and judicial branches of the federal government are coequal. It also defies common sense.

Historical analysis has always shown that the Founders, if anything, intended for Congress to be preeminent, and not the President and the executive branch. For example, only Congress has the constitutional power to remove the President and other high officers of the executive branch as well as the judiciary, but the latter cannot remove any member of Congress. And Congress has control of raising and spending government funds as well as the power to overrule any presidential attempt to veto legislation. That Congress does not always choose to fully exercise its constitutional powers does not remove them.

As to the Supreme Court and the whole judiciary, they function only as long as Congress provides funds, the executive branch provides security, and both choose to obey court decisions. More importantly, the Supreme Court does not act on its own to enforce the Constitution, even when the President and Congress disobey it, but it could.

It is time for Americans to stop and think. In what exact ways are the three branches coequal? According to the dictionary coequal means resembling each other in all respects. But ridding the culture of constitutional myths seems awfully difficult, especially since Garry Wills published his excellent book "A Necessary Evil" a decade ago, which artfully exposed a number of them.

In particular, presidents seem to like talking about the coequal branches of government, including Barack Obama. In January 2008 Obama said this in a speech: "No law can give Congress a backbone if it refuses to stand up as the co-equal branch the Constitution made it." Do presidents really want coequal branches? I think not. But they want Americans to keep believing in coequality, because it sounds good and adds an aura of respect for government that politicians desperately want.

In reality, presidents with the most political power want others with far less power to feel good. They want to keep the public believing (incorrectly) that the president is very limited in power. If George W. Bush proved anything it was not just that he created the imperial presidency, but that over time the presidency has become a mostly unchecked, pre-eminent and over-powerful government force. They have accumulated far more powers than ever envisioned by the Constitution. By regularly invoking the false coequality of branches argument and its derivative checks and balances thesis, presidents intentionally spread the propaganda to safeguard an all-powerful presidency and executive branch.

Meanwhile, Americans are largely ignorant that Congress has refused to honor and obey an important constitutional option in **Article V**: a convention of state delegates that could propose constitutional amendments, despite over **750** applications from all 50 states for a convention. It is their way of preserving exclusivity for proposing amendments and presidents say nothing because they fear amendments curbing their power. The Supreme Court does nothing because it likes amending the Constitution through its decisions.

Understand this: Having distinct constitutional responsibilities does not make branches coequal. The myth of coequality protects our delusional democracy and makes a mockery of our constitutional republic. If people really want coequal branches then they should start thinking about a constitutional amendment to make it so. Alternatively, we need Congress and the judiciary to act with far greater strength and conviction to use their constitutional powers and more effectively constrain presidential powers.

If prominent people tell a lie enough times, again, and again, and again, then the public lie becomes accepted fact, a cultural myth. So it is with the three coequal branches of government lie. It will be defended. It serves a purpose: False confidence in constitutional government.
